

Attorney Docket No.: **PTQ-0058**
Inventors: **Van Eyk et al.**
Serial No.: **10/824,027**
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REMARKS

Claims 1-12 are pending in the instant application.
New claims 13-20 which depend from claim 1 have been added.
Support for these claims is provided in the specification at
page 11, line 33, through page 12, line 6, page 12, lines
10-11, and page
page 25, line 27 though page 26, line 35. No new matter is
added by these amendments and entry is respectfully
requested.

Pending claims 1-12 have been subjected to a
Restriction Requirement as follows:

Group I, claims 1 and 2, drawn to a method for
identifying an agent or event capable of priming a cell for
preconditioning comprising assessing the ability of the
agent or event to modulate a preconditioning protein,
classified in class 435, subclass 4;

Group II, claims 3 and 4, drawn to a method for
diagnosing or monitoring preconditioning, ischemic, hypoxic,
ischemic/reperfusion, or ischemic/hypoxic conditions in a
subject comprising measuring modulation of a preconditioning
protein in a subject, classified in class 424, subclass 9.1;

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Group III, claims 5, 6, 9 and 10, drawn to a composition for modulating a preconditioning protein, classified in class 530, subclass 300; and

Group IV, claims 7, 8, 11 and 12, drawn to a method of modulating in a cell, tissue or organ a preconditioning protein, classified in class 424, subclass 94.2.

The Examiner has acknowledged the Groups III and I, II and IV to be related as product and process of use. However, the Examiner suggests that the Groups are distinct because the compositions can be used in materially different processes of use as disclosed in Groups I, II and IV.

Applicants respectfully traverse this Restriction Requirement.

At the outset, Applicants respectfully disagree with the Examiner's characterization of Group I, with claims drawn to a method for **identifying** an agent or event capable of priming a cell for preconditioning, as a "process of use" for compositions as set forth in Group III.

Further, MPEP § 803 sets forth two criteria which must be met for a proper restriction requirement. The first is that the inventions be independent or distinct; the second is that there would be serious burden on the Examiner if the restriction is not required. A search for prior art

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relating to methods for identifying agents or events capable of priming a cell for preconditioning based upon assessing the ability of the agent or event to modulate a preconditioning protein as set forth in Group I should also reveal art relating at least to Groups III and IV relating to compositions with the ability to modulate preconditioning proteins and methods for their use. Thus, including Groups I, III and IV in the prosecution of this application should not place any undue or serious burden on the Examiner.

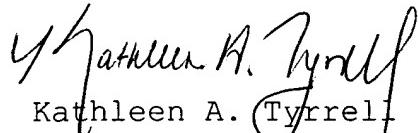
Accordingly, reconsideration of this Restriction Requirement is respectfully requested.

However, in an earnest effort to be completely responsive, Applicants elect Group I, claims 1 and 2 with traverse. It is respectfully requested that claims 13-20, which depend from Group I be included in prosecution of Group I as well.

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Applicants believe this reply is completely responsive
to the Office Action of record.

Respectfully submitted,


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Date: **February 11, 2005**

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